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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

HAI DINH NGUYEN,

Plaintiff and Respondent,

v.

MERIDIAN FINANCIAL SERVICES,
INC. et al.,

Defendants and Appellants.

H045332

(Santa Clara County
Super. Ct. No. 17-CV-313421)

Defendants appeal the issuance of a preliminary injunction postponing foreclosure on plaintiff's home until resolution of his lawsuit that alleges the relevant deed of trust was forged. Seeing no abuse of discretion, we will affirm the order.

I. BACKGROUND

The parties have competing versions of the events that led to foreclosure proceedings on plaintiff Hai Nguyen's home. According to Nguyen, his wife forged his signature on a deed of trust in 2012, creating a \$500,000 lien in favor of defendant Meridian Financial Services, Inc. on the home he owns as his separate property. He asserts she did that to lure Meridian to invest in what turned out to be a Ponzi scheme—she promised to repay the money in a year with 12 percent interest; a seemingly risk-free investment when secured by the deed of trust. But the promise was an empty one, part of a scam that bilked millions of dollars from multiple victims. All of that went on, Nguyen says, without his knowledge. Defendants believe otherwise. In their view, Nguyen was a

willing participant in his wife’s criminal activity: He signed the deed of trust and knowingly accepted significant financial benefits generated by the Ponzi scheme.

By late 2013 Meridian had not been repaid and decided to foreclose under its deed of trust. But when Nguyen informed the company retained to handle the foreclosure that the deed was a forgery, the sale was cancelled. Several years later, in July 2017, Meridian again started foreclosure proceedings and set a sale for the 28th of that month. On July 24, 2017, Nguyen sued Meridian, its principal, and the company hired to conduct the foreclosure. The complaint includes causes of action for fraud and declaratory relief, and alleges that the deed of trust was forged. Nguyen seeks a declaration that the deed is void, monetary damages according to proof, and an injunction preventing sale of his home. Nguyen also requested a temporary restraining order to halt the imminent foreclosure. The trial court granted the temporary restraining order and set a hearing to determine whether a preliminary injunction further postponing foreclosure—for the duration of the lawsuit—should issue.

After an evidentiary hearing, the trial court issued a preliminary injunction. The court determined Nguyen “is entitled to injunctive relief to preserve the status quo pending resolution of this case on the merits,” and ordered defendants to refrain from proceeding with the foreclosure.

II. DISCUSSION

A trial court has broad discretion to determine whether a preliminary injunction is warranted. We will reverse an order granting such relief only if there was an abuse of that discretion. (*Whyte v. Schlage Lock Co.* (2002) 101 Cal.App.4th 1443, 1450.) We view the evidence in the light most favorable to the ruling and accept the trial court’s factual findings so long as they are supported by substantial evidence. (*Integrated Dynamic Solutions, Inc. v. VitaVet Labs, Inc.* (2016) 6 Cal.App.5th 1178, 1184.)

A preliminary injunction is a tool to prevent irreparable harm between when a lawsuit is commenced and when its merits are adjudicated. To obtain a preliminary

injunction, a plaintiff must show that without an injunction he or she will be harmed in a way that an award of damages after trial will not adequately remedy. (*Tahoe Keys Property Owners' Assn. v. State Water Resources Control Bd.* (1994) 23 Cal.App.4th 1459, 1471.) However, since it would not be appropriate to provide interim relief to a party ultimately not entitled to a judicial remedy, a plaintiff also must show a reasonable likelihood of prevailing in the lawsuit. (*King v. Meese* (1987) 43 Cal.3d 1217, 1227.) And given the lack of final adjudication in the plaintiff's favor, a court must exercise caution in making an order that could be highly detrimental to the defendant. For that reason, another necessary consideration is balancing the hardships that would be visited upon each party should an injunction issue. If the gravity of the harm that would be incurred by the plaintiff without an injunction is outweighed by the harm the injunction would cause to the defendant, provisional relief may properly be denied. (*Common Cause v. Board of Supervisors* (1989) 49 Cal.3d 432, 441–442.)

Defendants here do not dispute that the threatened harm to Nguyen—loss of his home to foreclosure—is irreparable. And they do not suggest that an injunction delaying the foreclosure sale will cause injury to them that outweighs the harm Nguyen will experience from losing his home. Rather, defendants contend it was error to issue the injunction because Nguyen has no likelihood of prevailing in his lawsuit. They advance several arguments to support that position.

Defendants first argue that Nguyen cannot prevail because his lawsuit is barred by the statute of limitations. Identifying the relevant limitations period as three years for fraud (Code Civ. Proc., § 338, subd. (d)), they assert that the declaratory relief and the fraud causes of action are based on facts Nguyen discovered no later than April 2013, when he received a payment demand letter. Nguyen was further apprised of the alleged misconduct forming the basis of his lawsuit (the forged deed of trust) in September 2013 when he saw documents indicating that Meridian started the foreclosure process. Given

that he did not file his complaint until July 24, 2017, defendants assert Nguyen’s suit is time barred.

We reject the statute of limitations argument because Nguyen’s claims did not accrue until Meridian instituted the foreclosure proceedings at issue in July 2017—only weeks before the complaint was filed.¹ Even when a plaintiff is aware of an act that constitutes a legal wrong, the limitations period on a cause of action arising from that wrong does not begin to run until the plaintiff suffers “ ‘appreciable harm.’ ” (*Davies v. Krasna* (1975) 14 Cal.3d 502, 513.) An actionable wrong causing only nominal damages, speculative harm, or a threat of future harm normally will not trigger the statute of limitations. (*Ibid.*) For a suit like this one, which seeks to either prevent a foreclosure or recover the resulting damages should the foreclosure occur, the statute begins to run when the creditor acts to enforce its security interest by instituting foreclosure proceedings. (*Engstrom v. Kallins* (1996) 49 Cal.App.4th 773, 783–784.) Nguyen’s causes of action are based on harm from losing his home and therefore did not accrue until defendants instituted the foreclosure proceedings—rather than when he first became aware of the deed of trust, as defendants argue. A forged deed of trust is clearly a legal wrong, but the harm Nguyen complains of in *this* action stems from foreclosure, not the mere existence of a void deed.

We acknowledge that Nguyen admitted seeing documents in September 2013 indicating foreclosure proceedings had started. But those proceedings ended when Nguyen contacted the foreclosure company and told them the deed of trust was a forgery. Nguyen got the relief he wanted—cancellation of the foreclosure—through voluntary compliance, without having to file a legal action. He was not required to bring suit at that

¹ Nguyen apparently amended his complaint after the issuance of the preliminary injunction to include a cause of action for quiet title. But since that amended pleading was not before the trial court when it ruled on the motion for preliminary injunction, we do not consider the quiet title claim in deciding whether the court erred in making that ruling.

point or forever lose the right to do so. The foreclosure he now complains of was instituted in July 2017. As defendants concede in their opening brief, “Meridian initiated foreclosure proceedings on [Nguyen’s property] in July 2017.” And even if there were disagreement or confusion about when the foreclosure proceedings started, that is a factual question. Viewing the record in the light most favorable to the ruling, as we must, evidence supports a finding that the relevant foreclosure was not instituted until July 2017, and that Nguyen’s complaint would survive the statute of limitations issue.

Defendants make several other arguments that, to be successful, require factual findings in their favor. Pointing to the testimony of a handwriting expert who opined that the signature on the deed is Nguyen’s, defendants argue Nguyen has no likelihood of winning the lawsuit because, contrary to his claim of forgery, he signed the deed of trust. They alternatively argue that even if it was his wife who signed, Nguyen authorized that through a power of attorney executed in 2005. And they assert that, forged or not, Nguyen ratified the deed of trust when he knowingly accepted \$24 million that flowed from his wife’s Ponzi scheme.

The evidence is conflicting on all of those issues. Nguyen testified he never signed the deed of trust nor did he authorize his wife to do so. Defendants assert Nguyen’s testimony about not having authorized his wife to sign the deed is inadmissible under the parol evidence rule (Code Civ. Proc., § 1856) because it contradicts the express terms of the power of attorney. But on close examination, Nguyen’s statement that he did not grant his wife authority to execute documents in furtherance of a crime is entirely consistent with the language of the power of attorney, which limits its authorization to lawful acts only: “the undersigned hereby expressly ratifying and confirming all that said Attorney shall *lawfully* do or cause to be done[.]” (Italics added.) Regarding ratification by conduct, Nguyen testified he did not know about his wife’s criminal activity, nor did he receive millions of dollars. He explained that he remained unaware of the money his wife was bringing in because most of it was simultaneously going out to repay other

investors in the nature of a Ponzi scheme. Under our standard of review, we must interpret the evidence in the light most favorable to the ruling. The trial court had discretion to believe Nguyen's testimony and reject defendants' contrary evidence. It is not our role to second guess that decision.

Defendants raise in passing the defense of unclean hands, asserting that Nguyen's participation in and receipt of benefits from the Ponzi scheme would bar him from relief. But that argument was not made in the trial court, so it is forfeited on appeal. (*Marshall v. Marshall* (1965) 232 Cal.App.2d 232, 253 [unclean hands doctrine must be raised in the trial court].) Even if not forfeited, the argument fails here because of the conflicting evidence regarding Nguyen's awareness of the Ponzi scheme. Again, when the evidence conflicts, we construe it in the light most favorable to the prevailing party and indulge all reasonable inferences to support the trial court's order. (*Whyte v. Schlage Lock Co.*, *supra*, 101 Cal.App.4th 1443, 1450.)

That Nguyen has obtained provisional injunctive relief does not mean he will win the lawsuit or that the defenses raised are without merit. In this appeal we are asked to review only the granting of a preliminary injunction, which is not an adjudication of the ultimate rights in controversy. It merely reflects the trial court's balancing of the respective equities and conclusion that, pending a trial on the merits, the defendant should be restrained from exercising the right claimed. (*Continental Baking Co. v. Katz* (1968) 68 Cal.2d 512, 528.) On this record, it was not an abuse of discretion to preserve the status quo until the dispute can be resolved.

III. DISPOSITION

The order granting a preliminary injunction is affirmed. Plaintiff shall recover his costs on appeal.

Grover, J.

WE CONCUR:

Elia, Acting P. J.

Mihara, J.